

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

Docket No. 147,130

ORDER

ON the 2nd day of August, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of an Award on Review and Modification entered by Administrative Law Judge John D. Clark, dated May 9, 1994, came on for oral argument.

APPEARANCES

The claimant appeared by and through his attorney, Russell B. Cranmer of Wichita, Kansas. The respondent and its insurance carrier appeared by and through their attorney, William Townsley, III of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Andrew Busch of Wichita, Kansas. There were no other appearances.

RECORD

The record as specifically set forth in the Award of the Administrative Law Judge is herein adopted by the Appeals Board.

STIPULATIONS

The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUE

(1) Whether claimant has sustained his burden of proving that his permanent partial disability has changed since the journal entry issued by the District Court on October 1, 1993.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

(1) The claimant, an oil field contract pumper, alleges a change in his work disability as result of a loss of certain contracts for contract pumping in Oklahoma. This loss of these contracts does not stem from the claimant's physical abilities or inabilities and is not related to any change in claimant's functional impairment or work disability. The loss of contracts stems from the fact that the parties to the contract required a contract pumper who was more mechanically inclined. This lack of mechanical inclination does not stem from the claimant's injury or disability suffered while employed with respondent. This mechanical inclination, or lack thereof, existed prior to the claimant suffering his injury.

The burden of proof is upon the claimant to establish his right to an award for compensation by proving all of the various conditions on which his right to a recovery depends. This must be established by a preponderance of the credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984). Likewise, the burden of proving a changed condition under K.S.A. 44-528 is upon the party asserting the change. Davis v. Haren & Laughlin Construction Co., 184 Kan. 820, 823, 339 P.2d 41 (1959). In this instance, the claimant's assertion that the lost contracts were due to his lack of mechanical abilities, which are in no way related to his work-related injury, does not justify a review and modification of the original award under K.S.A. 44-528.

The evidence of vocational expert Jerry Hardin regarding the claimant's loss of ability to perform work in the open labor market and to earn comparable wages is based upon medical evidence considered by the Administrative Law Judge, the Assistant Director, and the District Court, during the original cause of action and not on any change of condition claimant may have suffered since that time. As such, that evidence does not support a finding that claimant's functional impairment or work disability has increased or diminished.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark, dated May 9, 1994, is affirmed in all respects and the claimant, Donald Eldredge, shall be and is denied his motion for review and modification against Eldredge Well Service, Travelers Insurance Company, and the Kansas Workers Compensation Fund.

Fees necessary to defray the expenses of the administration of the Workers Compensation Fund are hereby assessed against the respondent to be paid as follows:

Barber & Associates	
Transcript of Motion Hearing	\$138.20
Satterfield Reporting Services	
Deposition of Jerry D. Hardin	\$262.60

IT IS SO ORDERED.

Dated this ____ day of August, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Russell B. Cranmer, 2831 E. Central, Wichita, KS 67214
William Townsley, III, PO Box 997, Wichita, KS 67201
Andrew Busch, 1540 N. Broadway, Suite 205, Wichita, KS 67214
John D. Clark, Administrative Law Judge
George Gomez, Director